Office - Supreme Court, U.S.
FILED
OCT 13 1981
ALEXANDER L. STEVAS, CLERK

NO. 81-44

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

GILBERT FRANK LOPEZ,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA, SECOND
APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

GEORGE DEUKMEJIAN, Attorney General
of the State of California
ROBERT H. PHILIBOSIAN, Chief
Assistant Attorney General
--Criminal Division
S. CLARK MOORE,
Assistant Attorney General
ROBERT F. KATZ,
FREDERICK GRAB,
Deputy Attorneys General

3580 Wilshire Boulevard
Los Angeles, California 90010
Telephone: (213) 736-2100

Attorneys for Respondent

QUESTIONS PRESENTED

1. Whether inspections of pervasively regulated businesses, traditionally permitted in the absence of either a search warrant or probable cause, are rendered constitutionally impermissible solely by virtue of the fact that the official conducting the search is specifically seeking evidence of crime.

2. Whether statutorily authorized warrantless inspections of automobiles, for the purpose of locating stolen vehicles under circumstances presenting articulable and reasonable grounds for believing that theft-related activity is occurring are constitutionally impermissible.

TOPICAL INDEX

Page

Questions Presented i

Brief of Respondent in Opposition 1

Constitutional and Statutory Provisions at Issue 2

Statement of the Case.....5

Summary of Argument 5

I

Since the Warrantless Inspection was Justified Under the Regulated Industries Exception, Neither a Warrant Nor Probable Cause were Required 7

II

The Inspection was Reasonable 21

Conclusion 32

TABLE OF AUTHORITIES

Cases	Page
Camara v. Municipal Court (1967) 387 U.S. 523	22,27
Chambers v. Maroney (1970) 399 U.S. 42	24
Colonnade Catering Corp. v. United States (1970) 397 U.S. 72	8
Delaware v. Prouse (1979) 440 U.S. 648	20-21,23,26,27,28
Donovan v. Dewey (1981) ____U.S.____ 69 L.Ed.2d 262	9-10,16
Dunaway v. New York (1979) 442 U.S. 200	22,27
G.M. Leasing Corp. v. United States (1977) 429 U.S. 338	10
Jackson v. Superior Court 74 Cal.App.3d 361	18,24
Marshall v. Barlow's Inc. (1978) 436 U.S. 307	9,15,20,23
Michigan v. Tyler (1978) 436 U.S. 499	20,27
People v. Grubb, 63 Cal.2d 614	18
People v. Woolsey, 90 Cal.App.3d 994	14
Scott v. United States (1978) 436 U.S. 128	19
See v. City of Seattle (1967) 387 U.S. 541	20

Page

State v. Galio (1979)
587 P.2d 44 15

Terry v. Ohio (1968)
392 U.S. 1..... 22,23,27,28

United States v. Biswell (1972)
406 U.S. 311 8,10,14-15,16,19

United States v. Chadwick (1977)
433 U.S. 1 24,26

Statutes

California Vehicle Code

Section 220 11

Section 221 11

Section 320 7-8,11,12,17,21

Section 1662 12

Section 2805 7,13,17,21,23
24,25,26,28,29

Section 4462 26

Section 9264 12

Section 10656 12-13

Section 12951 26

Stats. 1973, Ch. 996, § 1 14

Constitutions

United States Constitution
Fourth Amendment 20-21,23,31

NO. 81-44

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

GILBERT FRANK LOPEZ,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

Respondent, State of California, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari in which petitioner seeks review of the judgment of the Court of Appeal of the State of California, Second Appellate District, Division Two (2d Crim. No. 37347), entered on March 6, 1981,

affirming the judgment of conviction imposed by the Superior Court of Los Angeles County.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Amendment IV of the Constitution of the United States:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

California Vehicle Code section 320, which at the time of the search at issue here read, in salient part, as follows:

> "'Established place of business' is a place actually occupied either

continuously or at regular periods by:

". . . .

"(b) An automobile dismantler where the books and records pertinent to the type of business being conducted are kept. . . . The place of business shall be open to inspection of the premises, pertinent records and vehicles by any peace officer during business hours."

California Vehicle Code section 2805 which, at the time of the search at issue here, read in salient part as follows:

"(a) For the purpose of locating stolen vehicles, a member of the California Highway Patrol . . . may inspect any vehicle of a type required to be registered under this code on a highway or in any public garage,

repair shop, parking lot, new or used car lot, automobile dismantlers lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment, and may inspect the title or registation of vehicles, in order to establish the rightful ownership or possession of the vehicle.

". . . .

"(c) Whenever possible, inspections conducted pursuant to subdivision (a) or (b) shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations."

* * * *

STATEMENT OF THE CASE

Respondent accepts the rendition of the facts and proceedings presented by petitioner commencing at page 2 of the Petition for Writ of Certiorari, with the following addition: Investigator Ririe had been informed by Mr. Brodigan, Manager of Color Glow Paint Store, that the cars he had been painting for Sol Mizrahi were "questionable." (R.T. p. 52.)[1/]

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied. Under longstanding authority, warrantless inspections of pervasively regulated businesses, of which the auto dismantling

---

1. "R.T.," will refer to the Reporter's Transcript, while "C.T." will refer to the Clerk's Transcript included as part of the record on appeal below.

industry in California is an example, are permissible in the absence of any showing with regard to probable cause whatsoever. It has been held that a proprietor of such a business in effect consents to such searches by choosing to enter a field in which pervasive regulation, including inspection, is established by statute. The state of mind of, or degree of information possessed by, the searching official in no way undermines this result. Furthermore, it has long been recognized that intrusions which are specifically limited in scope frequently invoke less stringent protections under the Fourth and Fourteenth Amendments to the United States Constitution. On balance, the search at issue here, limited in purpose and scope, and conducted on the basis of articulable and reasonable grounds to suspect theft related activity, was reasonable and therefore lawful.

ARGUMENT

I

Since the Warrantless Inspection was Justified Under the Regulated Industries Exception, Neither a Warrant Nor Probable Cause were Required

The warrantless inspection of his business of which petitioner now complains was held valid by the court below under the provisions of sections 320 and 2805 of the California Vehicle Code.[2/] As the opinion of the California Court of Appeal demonstrates, searches under Vehicle Code section 2805, as construed, must be made "'under reasonable circumstances, within constitutional limitations.'" (Petn. for Writ of Certiorari, Appen. A, p. 6.) Similarly, searches effected under Vehicle Code

---

2. The salient portions of these statutes are set forth above at pages 2 to 4.

section 320, which must be made during normal business hours, are permissible without warrant because of the "'elaborate provisions for registration and licensing of businesses engaged in dismantling vehicles . . . .'" (Id., at p. 7.) Petitioner appears to accept the validity of warrantless inspections of heavily regulated industries as enunciated in United States v. Biswell (1972) 406 U.S. 311, and Colonnade Catering Corp. v. United States (1970) 397 U.S. 72, at least with respect to "the inspection of a business to determine compliance with administrative regulations . . . . " (Petn. p. 19.) It is respondent's position that the search at issue here, when considered in conjunction with Vehicle Code section 320, does indeed fall within the regulated industries exception, and that this conclusion is dispositive of the instant issue.

It has long been recognized that,

> "Certain industries have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise. . . . [W]hen an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of government regulation. . . . 'The businessman in a regulated industry in effect consents to the restrictions placed upon him.'" (Marshall v. Barlow's, Inc. (1978) 436 U.S. 307, 313.)

The concomitant reduction in reasonable privacy expectation of the proprietor of a regulated industry leads to the conclusion that "legislative schemes authorizing warrantless administrative searches of

commercial property do not necessarily violate the Fourth Amendment." (Donovan v. Dewey (1981) ____ U.S. ____, 69 L.Ed.2d 262, 268; United States v. Biswell, supra (1972) 406 U.S. 311, 316.)

As noted in G.M. Leasing Corp. v. United States (1977) 429 U.S. 338, 353, "a business, by its special nature and voluntary existence, may open itself to intrusions that would not be permissible in a purely private context."

There can be little doubt that under the prevailing statutory scheme in California, the auto dismantling industry is "pervasively regulated" within the purview of this exception. (United States v. Biswell, supra, 406 U.S. 311, 316.)[3/] To begin with, an entire

---

3. While petitioner's business was designated as an automobile body shop, the Court of Appeal found, as a matter of

chapter of the Vehicle Code, comprising twenty sections, is devoted to the subject of automobile dismantlers. (Div. 5, Ch. 3.) This chapter specifies the regulations surrounding the granting, refusal, and failure to obtain a license to operate as an automobile dismantler. Other pertinent reporting requirements are included in this chapter.

The term "dismantler" itself is defined and limited in sections 220 and 221 of the California Vehicle Code. Among other miscellaneous provisions relating to automobile dismantlers are sections

---

fact, that petitioner was engaged in the business of auto dismantling, and that, by virtue of this fact, California Vehicle Code section 320 was applicable to him. (Petn. Appen. A, p. 7.)

relating to renewal and alteration of licenses (Cal. Veh. Code, § 9264), defining the duties of the Department of Motor Vehicles with respect to complaints directed at automobile dismantlers (Cal. Veh. Code, § 1662), and defining an established place of business within the meaning of the code. (Cal. Veh. Code, § 320). It is this same section, which requires such place of business to "be open to inspection of the premises, pertinent records and vehicles by any peace officer during business hours" which was relied upon, in part, by the California Court of Appeal below in validating the search of petitioner's place of business.

Similarly, section 10656 of the Vehicle Code permits inspection of

> "any vehicle of a type required to be registered under this code in any garage, repair shop, parking lot,

used car lot, automobile dismantlers lot, or other similar establishment for the purpose of investigating the title and registration of vehicles and inspection of vehicles wrecked or dismantled."

This provision is very similar in language to Vehicle Code section 2805, which was the other statutory basis upon which the search in the instant case was sustained below. Respondent will argue, in Argument II below, that the provisions of section 2805 are reasonable in virtually every conceivable circumstance in which it could be applied under the construction given by the courts of California. For the purpose at hand, only searches and inspections conducted at facilities, such as petitioner's, actually engaged in automobile dismantling need be considered.

* * * *

As noted in People v. Woolsey (1979) 90 Cal.App.3d 994, 1002, limited inspections for the purpose of locating stolen vehicles has been permitted under California law since 1935. Moreover, the importance of the motor vehicle industry to the welfare of California in general cannot be seriously contested. In a different context, the Legislature of California found and declared that "the distribution and sale of new motor vehicles in the State of California vitally affects the general economy of the state and the public welfare . . . ." (Stats. 1973, Ch. 996, § 1.)

It should be clear, then, that petitioner, by choosing to engage in the pervasively regulated business of automobile dismantling, did so with a reasonably reduced expectation of privacy with respect to his business. (United

States v. Biswell, supra, 406 U.S. at p. 416.) The fact that petitioner's entry into the automobile dismantling business was surreptitious and unlawful, circumventing the mandatory licensing and registration requirements, cannot change this result in the slightest. Petitioner's suggestion that this result is undermined by the holding in State v. Galio (1979) 587 P.2d 44, is unavailing. (Petn. at p. 20.) In that case, it was held that a New Mexico statute authorizing warrantless inspections of what were essentially automobile dismantlers was not supported by an urgent governmental interest, supposedly required under Marshall v. Barlow's, Inc., supra. While respondent submits that Galio was incorrectly decided, since it failed to take into account the "single industry" aspects of the Marshall v. Barlow's, Inc. decision (436 U.S. at p. 321), it is clear

that the determination by a New Mexico court with respect to the quantum of governmental interest in the automobile industry of New Mexico is entirely irrelevant to the parallel determination in California.

Similarly, it is entirely clear from the decisions of this Court that the requirement of a federal interest and congressional regulation relates to congressional competence to regulate in the first instance, rather than to the power of Congress to modify the scope of Fourth Amendment protections. (Donovan v. Dewey, supra, ____ U.S. ____, 69 L.Ed.2d at p. 269; United States v. Biswell, supra, 406 U.S. at pp. 314-315.) It should thus be apparent that the "regulated industry" exception to the warrant requirement cannot be the exclusive domain of congressional enactments, but that the states are likewise entitled

to determine for themselves, within reasonable limits, those industries which, because of extreme importance or risk, require pervasive regulation and, where necessary, warrantless inspection.

Respondent submits that the inspection in the instant case was clearly justified on the basis of the principles set forth above. While petitioner was not a licensed dismantler, reasonable grounds existed to believe that he was engaged in that activity at the time the inspection was conducted. (R.T. p. 52.) The existence of such reasonable grounds rendered likewise reasonable the application of California Vehicle Code section 320 to petitioner, despite the fact that his business was not licensed as an automobile dismantler. Similarly, viewing the search as authorized by Vehicle Code section 2805, as construed by the courts of California, requires the raising of

"the probability" that activity relating to automobile theft was taking place. (People v. Grubb (1965) 63 Cal.2d 614, 618.) Furthermore, the search authorized by that section is very limited in scope, extending only to evidence of ownership of the vehicle. (Jackson v. Superior Court (1977) 74 Cal.App.3d 361, 367.) Thus, it should be clear that ample statutory authority, predicated upon a requisite degree of governmetal interest, justified the inspection in the instant case.

Petitioner nevertheless maintains that where as here, the purpose of an inspection or search is to secure evidence of a crime, probable cause in the criminal law sense, as well as a warrant, are required (Petn. at p. 19). It should be clear that the detection of crime, or at least of statutorily prohibited conduct subject to penalty, is always the likely outcome of an administrative inspection.

(See generally United States v. Biswell, supra, 406 U.S. 311.) Indeed, the conduct which resulted in the instant judgment is precisely the type of activity which the pervasive regulation scheme discussed above was designed to prevent.

Finally, it has been held that an officer's state of mind will not invalidate a search "as long as the circumstances, viewed objectively, justify that action." (Scott v. United States (1978) 436 U.S. 128, 138.) If, as respondent has attempted to demonstrate, the search of petitioner's place of business was authorized by the valid regulatory scheme, the propriety of that search should not be undermined because of the information possessed by the officers, whether that information constitutes a mere suspicion, probable cause to arrest, or, as in the instant case, reasonable grounds to believe criminal activity is

taking place.

It should, perhaps, be noted in this regard that the distinction which grounds petitioner's assertions--namely that between administrative searches and searches conducted for the purpose of criminal prosecution--does not in fact exist under the decisions of this Court. In other words, it has been "held that the Fourth Amendment prohibition against unreasonable searches protects against warrantless intrusions during civil as well as criminal investigations." (Marshall v. Barlow's Inc., supra, 436 U.S. 312; see also Michigan v. Tyler (1978) 436 U.S. 506; See v. City of Seattle (1967) 387 U.S. 541, 543.) Rather, the differing results achieved in various factual settings must be seen as the product of the appraisal which underlies all Fourth Amendment adjudication, namely "balancing

the public interest against the individual's Fourth Amendment interests . . . ." (Delaware v. Prouse (1979) 440 U.S. 648, 657.)

II

The Inspection Was Reasonable

Respondent has attempted to demonstrate above that the inspection, without warrant, of petitioner's place of business was justified under the regulated industries exception to the warrant requirement, especially when viewed from the perspective of California Vehicle Code section 320 relating to automobile dismantlers. Alternately, respondent submits that limited searches for the purpose of determining ownership of a motor vehicle under reasonable and limited circumstances, as authorized by Vehicle Code section 2805 as construed by the courts of California, represent "a sui

generis 'rubric of police conduct,'" which, like the "'stop and frisk'" considered by this court in Terry v. Ohio (1968) 392 U.S. 1, should be evaluated on the basis of balancing of the limited intrusion against the governmental interest supporting the search. (Dunaway v. New York (1979) 442 U.S. 200, 209.)

In Terry v. Ohio, this Court identified "the central inquiry under the Fourth Amendment--the reasonableness in all the circumstances of the particular governmental invasion. . . ." (392 U.S. at p. 19.) In Camara v. Municipal Court (1967) 387 U.S. 523, this Court noted the absence of a "ready test for determining reasonableness" other than a balance between "the need to search" and "the invasion which the search entails." (387 U.S. 537.) And in the specific context of statutorily authorized warrantless

searches, this Court has specifically held that the reasonableness of such searches depends "upon the specific enforcement needs and privacy guarantees of each statute." (Marshall v. Barlow's, Inc., supra, 436 U.S. 307, 321.)

It is readily apparent that the instant search, when viewed as predicated upon the provisions of Vehicle Code section 2805, satisfies the requirements of reasonableness as identified above. To begin with, this Court has repeatedly noted that Fourth Amendment interests in the balance identified above are, in some rough way, proportional to the degree of intrusion involved in the search. (Delaware v. Prouse, supra, (1979) 440 U.S. 648, 656-657; Terry v. Ohio, supra, 392 U.S. 1, 25.) In addition, it has been recognized that the longstanding rule permitting warrantless searches of automobiles where probable cause to believe

contraband is present "has been based in part on their inherent mobility," but rests primarily on "the diminished expectation of privacy which surrounds the automobile." (United States v. Chadwick (1977) 433 U.S. 1, 12; Chambers v. Maroney (1970) 399 U.S. 42, 50-51.)

As noted in Jackson v. Superior Court, supra, 74 Cal.App.3d 361, 367, judicial interpretation of Vehicle Code section 2805 requires reasonable circumstances before the limited intrusion for the purpose of investigating title or registration will be sanctioned. Indeed, in Jackson itself, it was held that police entry to obtain registration information must be preceded by an inquiry if the vehicle is occupied. Clearly, the courts of California have construed Vehicle Code section 2805 within narrow and reasonable limits in order to render the limited

intrusion authorized thereunder compatible with constitutional requirements.

In the instant case, it is clear from the record that Officer Ririe informed petitioner of his identity, the purpose of his inspection, and the statutory authority for it under Vehicle Code section 2805. (C.T. pp. 199, 202.) A "complete search of the premises" was not conducted in the instant case, but inspection was limited to paperwork and vehicles or parts thereof. (C.T. p. 204.) Petitioner does not assert, nor does the instant record support the inference, that the police inspection at any time exceeded this limited scope.

It is well settled that, following a relatively minor traffic infraction, a motorist may be lawfully required to furnish evidence of his right to operate a motor vehicle and of the registration and ownership of the vehicle he is driving.

(Delaware v. Prouse, supra, 440 U.S. 648, 659.) Similarly, in the same case this Court noted that prominent display of license plates is required in many, if not most states. (440 U.S. at p. 660; see also United States v. Chadwick, supra, 433 U.S. at pp. 12-13.) These requirements are implemented by statute in California. (Cal. Veh. Code, §§ 4462; 12951.) Respondent submits that the current construction of Vehicle Code section 2805 is, if at all, but slightly more intrusive than the statutes permitting inspection of a driver's license or registration certificate. The physical intrusion in the instant case was clearly minimal: no property was destroyed; no closed containers were opened. And to the degree to which incriminatory information was obtained as a result of the inspection, such is clearly and equally possible with

respect to the request for a driver's license or registration certificate.

This Court has recognized for some time that the degree of protection to be afforded an individual from government intrusions--such as the necessity for a judicial warrant or the requisite level of knowledge or information possessed by the officer or official--is a function of the degree of intrusiveness implicit in the search or inspection itself. (Dunaway v. New York, supra, 442 U.S. 200, 210; Michigan v. Tyler, supra, 436 U.S. 499, 506; Camara v. Municipal Court, supra, 387 U.S. 523, 538-539.) Thus, in at least two situations, this Court has held that warrantless intrusions of a limited nature may be effecuated on less than traditional probable cause. (Delaware v. Prouse, supra, 440 U.S. 648, 663 (production of license and registration); Terry v. Ohio, supra, 392 U.S. 1, 21. (Weapons "pat-

down"). In each of these cases, the court has required only "specific and articulable facts" which give rise to a reasonable suspicion warranting the particular intrusion. (392 U.S. at p. 21, 440 U.S. at p. 663.)

It is clear that in the instant case, and in all cases likely to arise under the current construction of California Vehicle Code section 2805, the requirement of "articulable and reasonable suspicion" was, and will be, met. (Ibid.) Specifically, in the instant case, Officer Ririe had been informed by Sergeant Biller of the Hollywood Division of the Los Angeles Police Department that numerous cars in apparently undamaged condition were entering Daytona Auto Body never to be seen again. (C.T. pp. 197-198.) In addition, during an investigation concerning a confessed car thief named Stradman, a refurbisher of cars of

questionable origin named Sol Mizrahi was linked to Daytona Auto Body. (C.T. p. 198; R.T. p. 46.) Finally, on the day prior to the search at issue, investigator Ririe was contacted by an investigator Johnson in Alhambra, California who indicated that he was investigating insurance frauds involving Daytona Auto Body. (C.T. p. 198.)

While respondent concedes that this information did not meet the requisite standards of specificity and personal knowledge to amount to probable cause for the issuance of a search warrant, it is apparent that this information provided the articulable and reasonable suspicion required for the limited inspection authorized under Vehicle Code section 2805 and actually conducted in the instant case. Indeed, respondent submits that the nature of

petitioner's enterprise--an unlicensed and unlawful dismantler of, and dealer in, stolen vehicles--further justifies the utilization of limited warrantless inspections on less than traditional probable cause.

Clearly, petitioner's enterprise was sophisticated, including the leasing of a three-story building, two floors of which he subleased to a tenant, the maintenance of elaborate facilities for dismantling, reassembling, and painting automobiles, and direct contact with perspective buyers. Petitioner also apparently employed several workers in his enterprise. (R.T. pp. 53-58.) Moreover, the speed with which petitioner was able to conduct his activities is evidenced by the fact that, in attempting to execute an arrest warrant for petitioner, Officer Ford impounded two additional vehicles in various stages of reconstruction eight

days after investigator Ririe conducted the initial inspection. (C.T. pp. 224-225; 229.) Clearly, the degree of speed and sophistication demonstrated by petitioner's enterprise renders both reasonable and necessary the type of limited warranted intrusion contested by petitioner.

Since the inspection conducted in the instant case was clearly reasonable under longstanding principles of Fourth Amendment adjudication, respondent submits that this Court should therefore deny the requested writ of certiorari to review the denial of petitioner's motion to suppress evidence.

* * * *

CONCLUSION

For the foregoing reasons, respondent urges that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

GEORGE DEUKMEJIAN, Attorney General
of the State of California
ROBERT H. PHILIBOSIAN, Chief
Assistant Attorney General
--Criminal Division
S. CLARK MOORE,
Assistant Attorney General
ROBERT F. KATZ,
Deputy Attorney General
FREDERICK GRAB,
Deputy Attorney General

Attorneys for Respondent